

INDIANA BOARD OF TAX REVIEW
Small Claims
Final Determination
Findings and Conclusions

Petitions: 27-025-02-1-4-00015
27-025-02-1-4-00017
Petitioner: Grant County Manufactured Housing
Respondent: Pleasant Township Assessor (Grant County)
Parcels: 0336-404-026-000-25
0336-404-028-000-25
Assessment Year: 2002

The Indiana Board of Tax Review (Board) issues this determination in the above matter. The Board finds and concludes as follows:

Procedural History

1. The Petitioner initiated an assessment appeals with the Grant County Property Tax Assessment Board of Appeals (the PTABOA) by filing Form 130 petitions on August 19, 2003.
2. The PTABOA mailed the notice of its decision to the Petitioner on April 18, 2006.
3. The Petitioner appealed to the Board by filing a Form 131 for each parcel on May 16, 2006. It elected small claims procedures.
4. The Board issued a notice of hearing dated November 29, 2007. The Respondent requested a continuance. The Board issued a rescheduled notice of hearing on January 8, 2008.
5. Administrative Law Judge Patti Kindler held the hearing in Marion on April 9, 2008.
6. The parties were represented by the following counsel:
For the Petitioners - Kyle C Persinger, Attorney,
For the Respondent - Marilyn Meighen, Attorney.
7. The following persons were present and sworn as witnesses:
For the Petitioner - Timothy J. Moses, Executive Director of Grant County
Manufactured Housing,
For the Respondent - Gary Landrum, Grant County Assessment Deputy.

Facts

8. The subject property consists of two lots with asphalt paving located on Western Avenue in Marion, Indiana.
9. The Administrative Law Judge did not inspect the property.
10. The PTABOA determined the assessed value for each parcel is \$68,300 for land and \$29,900 for improvements (total \$98,200).
11. On the Form 131 Petitions, the Petitioner requested an assessed value of \$60,000 for the land and \$8,000 for the improvements (\$68,000 total).¹

Issue

12. Summary of the Petitioner's case:
 - a) The assessment of the subject land and paving is excessive. The subject parcels are lots 4 and 5 on the aerial map outlined in orange. They are contiguous with the location of the manufactured home sales company that has frontage on the State Road 9 and 37 Bypass. The subject lots serve as a buffer for compliance with zoning. They do not have exposure to traffic on the bypass. *Moses testimony; Pet'r Ex. 1.*
 - b) The paving assessment is incorrect based on the actual cost. The Petitioner paved these two lots along with four other parcels that belong to Mr. Moses for a total cost of \$36,150 in 1998 and 1999. After receiving bids from two reputable companies, the chosen company resurfaced the lots with 1 to 1.5 inches of asphalt paving. The cost per parcel for the six paved parcels (including the subject parcels) is approximately \$6,000. Some depreciation also should be allowed from that amount. The correct value would be substantially lower than the current assessment for paving. *Moses testimony.*
 - c) The assessment of the paving is excessive based on the assessments of comparable properties with asphalt paving of similar size and condition. Parcel record information sheets and a spreadsheet showing paving assessments for four neighborhood comparable properties highlighted in pink on the aerial map establish the location and amount of frontage and acreage for comparable asphalt paving assessments. The assessments for paving on neighboring properties are between \$6,000 and \$6,300. The subject paving assessments are \$29,000. These comparable parcels each have 100 feet of frontage and nearly identical amounts of paving. The condition is similar. The resulting assessments, however, are not equal. *Persinger argument; Pet'r Ex. 1-2.*

¹ At the hearing the Petitioner requested an assessed value of \$6,000 for each parcel for paving.

- d) The \$300,000 base rate for the subject acreage is excessive and unreasonable. The only sales data used by the Respondent was one sale in 2002 and one in 2005. Neither of these sales is relevant to the \$300,000 per acre base rate used in the subject assessments. *Persinger argument.*
- e) Assessing officials lowered the value of one of the Petitioner's lots located in the same block as the subject lots from \$98,200 to \$68,300, which shows the inequality between it and the Petitioner's adjoining lots in this appeal. A reduction of the land value for each of the subject lots from \$98,200 to \$68,300 would be a more accurate reflection of their value. *Persinger argument.*

13. Summary of the Respondent's case:

- a) The depreciation schedule from the Guidelines shows that paving depreciates rapidly because it has a short life expectancy. The subject property has paving that is much newer than the Petitioner's purported comparables. That fact explains the difference in paving values. *Landrum testimony; Resp't Ex. 41.*
- b) According to the Guidelines, the paving assessments for the Kreigbaum and Mutual Federal parcels get 80% depreciation due to age. Because it was new in 2000, the paving on the subject parcels got no depreciation. Depreciation constitutes the difference in the assessments of the paving. *Landrum testimony; Resp't Ex. 26A, 28A, 30A, 33A.*
- c) The Petitioner's cost for asphalt paving in 1998 and 1999 does not take into account the paving that was already there. The value of the existing base also must be considered. *Landrum testimony.*
- d) The Guidelines define elements of cost as direct labor, indirect costs, and material costs required to construct an improvement. Material costs include labor, materials, supervision, utilities used during construction, and equipment rental. Indirect costs include building permits, fees, insurance, taxes, construction interest, overhead, profit and professional fees. Even though the Petitioner offered conclusory testimony regarding what it paid to topcoat the asphalt, there are no invoices to support the testimony. Further, the value in the existing asphalt base was not considered and the elements of its cost are unknown. *Meighen argument.*
- e) The base rate price is \$300,000 per acre for all the properties located between the bypass and Western avenue. The property record cards for thirty-nine parcels in the immediate neighborhood show the subject parcels are assessed in the same manner as the other neighborhood land parcels using the \$300,000 base rate. *Landrum testimony; Resp't Ex. 2-40.*
- f) Some of the land assessments for comparable parcels have influence factors applied to them. Those influence factors vary from negative 34% to negative

69%. The subject lots received a negative 68% factor. *Landrum testimony; Resp't Ex. 1-40.*

- g) The Petitioner's comparables do not show disparity. The base rate for the Matthew's land comparable is the same as the subject property, \$300,000 per acre. The McClure's land base rate is different, but it is based on classification as usable, undeveloped land because it no longer houses a business and the paving is in disarray. The subject property is primary commercial land with an ongoing business. *Landrum testimony.*
- h) In *Eckerling v. Wayne Twp.*, the Indiana Tax Court found that the "bottom line value" or the "true tax value" is what matters when it comes to assessments. Any misapplication of the Guidelines is not relevant, so long as the assessment gets to the correct "bottom line value." *Meighen argument.*
- i) Case law requires the Petitioner to meet a specific burden. In the *Westfield Golf Practice Center v. Washington Twp. Assessor* case, the Petitioner presented evidence that its driving range assessment differed from five other driving ranges that had different classifications. Although the Petitioner showed a wide range in values, the court rejected its claim holding that it does not matter which schedule or methodology the assessor used. The Petitioner must show what the correct "bottom line value" should be. *Meighen argument.*
- j) The Board's decision in *Big Foot Stores v. Pleasant Twp. Assessor* is relevant because Big Foot showed that other convenience stores in Grant County were not assessed at the same square footage rates as its stores. Nevertheless, the Board held that the Petitioner cannot merely rely on a difference in values, but rather, the Petitioner must prove that the value used for the assessment is incorrect. *Meighen argument.*

Record

14. The official record for this matter is made up of the following:
- a) The Petition,
 - b) The digital recording of the hearing.
 - c) Petitioner Exhibit 1 – Aerial photograph of the subject and comparable properties,
Petitioner Exhibit 2 – Spreadsheet of values for the subject and comparable properties, including parcel record information sheets,
Petitioner Exhibit 3 – Portions of Appendix F from the Real Property Assessment Manual for 2002,

Respondent Exhibit 1 – PRC for McClure parcel 27-03-36-404-035.000-023,

Respondent Exhibit 2* – PRC for Clanin parcel 0601-101-009.000-15 (each of Respondent’s Exhibits designated with * consists of only page 1 of a property record card),

Respondent Exhibit 3* – PRC for Walgram parcel 0336-404-045.000-25,

Respondent Exhibit 4* – PRC for Pence parcel 0336-404-044.000-25,

Respondent Exhibit 5* – PRC for Bank One parcel 0336-404-043.000-25,

Respondent Exhibit 6* – PRC for Chochos parcel 0336-404-037.000-25,

Respondent Exhibit 7* – PRC for Chochos parcel 0336-404-036.000-25,

Respondent Exhibit 8* – PRC for Chochos parcel 0336-404-034.000-25,

Respondent Exhibit 9* – PRC for Rehill parcel 0336-404-033.000-25,

Respondent Exhibit 10* – PRC for Moses parcel 0336-404-032.000-25,

Respondent Exhibit 11* – PRC for Moses parcel 0336-404-030.000-25,

Respondent Exhibit 12* – PRC for Moses parcel 0336-404-027.000-25,

Respondent Exhibit 13* – PRC for Moses parcel 0336-404-025.000-25,

Respondent Exhibit 14* – PRC for Moses parcel 0336-404-023.000-25,

Respondent Exhibit 15* – PRC for Chochos parcel 0336-401-031.000.25,

Respondent Exhibit 16* – PRC for Chochos parcel 0336-401-032.000-25,

Respondent Exhibit 17* – PRC for Chochos parcel 0336-401-032.001-25

Respondent Exhibit 18* – PRC for Chochos parcel 0336-401-034.000-25,

Respondent Exhibit 19* – PRC for Chochos parcel 0336-401-035.000-25,

Respondent Exhibit 20* – PRC for Chochos parcel 0336-401-035.001-25,

Respondent Exhibit 21* – PRC for Chochos parcel 0336-404-018.000-25,

Respondent Exhibit 22* – PRC for Chochos parcel 0336-404-017.000-25,

Respondent Exhibit 23* – PRC for Chochos parcel 0336-404-014.000-25,

Respondent Exhibit 24* – PRC for Chochos parcel 0336-404-007.000-25,

Respondent Exhibit 25* – PRC for Kreigbaum parcel 0336-404-006.000-25,

Respondent Exhibit 26* – 2002 PRC for Kreigbaum parcel 0336-404-004.000-25,

Respondent Exhibit 26A – 2007 PRC for Kreigbaum parcel 0336-404-004.000-25,

Respondent Exhibit 27* – PRC for Kreigbaum parcel 0336-404-003.000-25,

Respondent Exhibit 28* – 2002 PRC for Kreigbaum parcel 0336-404-041.000-25,

Respondent Exhibit 28A – 2007 PRC for Kreigbaum parcel 0336-401-041.000-25,

Respondent Exhibit 29* – PRC for Kreigbaum parcel 0336-401-039.000-25,

Respondent Exhibit 30* – 2002 PRC for Kreigbaum parcel 0336-401-037.000-25,

Respondent Exhibit 30A – 2007 PRC for Kreigbaum parcel 0336-401-037.000-25,

Respondent Exhibit 31* – PRC for Kreigbaum parcel 0336-401-036.000-25,

Respondent Exhibit 32* – PRC for Marion Federal Savings & Loan parcel 0336-404-021.000-25,

Respondent Exhibit 33* – 2002 PRC for Marion Federal Savings & Loan parcel 0336-404-022.000-25,

Respondent Exhibit 33A – 2007 PRC for Mutual Federal Savings Bank parcel 0336-404-022.000-25,

Respondent Exhibit 34* – PRC for J & R Real Properties LLC parcel 0336-401-040.000-25,

Respondent Exhibit 35* – PRC for Lewis parcel 0336-401-042.000-25,
Respondent Exhibit 36* – PRC for Moore parcel 0336-404-013.000-25,
Respondent Exhibit 37* – PRC for Spencer & Western parcel 0336-404-019.000-
25,
Respondent Exhibit 38* – PRC for Durkes parcel 0336-404-024.000-25,
Respondent Exhibit 39 – PRC for Grant County Manufactured Housing parcel
0336-404-026.000-25,
Respondent Exhibit 40 – PRC for Grant County Manufactured Housing parcel
0336-404-028.000-25,
Respondent Exhibit 41 – Pages from Real Property Assessment Guideline,
Version A, Appendix G at 27, Appendix F at 30-31,

Board Exhibit A – Form 131 Petitions with attachments,
Board Exhibit B – Notice of Hearing,
Board Exhibit B1 – Notice of Hearing Re-Schedule,
Board Exhibit C – Hearing Sign-In Sheet,
Board Exhibit D – Notice of County Assessor’s Representation for Pleasant Twp.,
Board Exhibit E – Notice of Appearance of Petitioner’s Attorney,
Board Exhibit F – Notice of Appearance of Respondent’s Attorney,

d) These Findings and Conclusions.

Analysis

15. The most applicable governing cases are:

- a) A Petitioner seeking review of a determination of an assessing official has the burden to establish a prima facie case proving that the current assessment is incorrect and specifically what the correct assessment would be. *See Meridian Towers East & West v. Washington Twp. Assessor*, 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003); *see also Clark v. State Bd. of Tax Comm’rs*, 694 N.E.2d 1230 (Ind. Tax Ct. 1998).
- b) In making its case, the taxpayer must explain how each piece of evidence is relevant to the requested assessment. *See Indianapolis Racquet Club, Inc. v. Washington Twp. Assessor*, 802 N.E.2d 1018, 1022 (Ind. Tax Ct. 2004) (“[I]t is the taxpayer’s duty to walk the Indiana Board . . . through every element of the analysis”).
- c) Once the Petitioner establishes a prima facie case, the burden shifts to the assessing official to rebut the Petitioner’s evidence. *See American United Life Ins. Co. v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004). The assessing official must offer evidence that impeaches or rebuts the Petitioner’s evidence. *Id.*; *Meridian Towers*, 805 N.E.2d at 479.

16. The Petitioner did not provide sufficient evidence to support its contentions. The Board arrived at this conclusion because:

- a) Real property is assessed based on its true tax value, which does not mean fair market value, but rather "the market value-in-use of a property for its current use, as reflected by the utility received by the owner or a similar user, from the property." Ind. Code § 6-1.1-31-6(c); 2002 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.3-1-2). There are three generally accepted techniques to calculate market value-in-use: the cost approach, the sales comparison approach, and the income approach. The primary method for assessing officials to determine market value-in-use is the cost approach. *Id.* at 3. To that end, Indiana promulgated a series of guidelines that explain the application of the cost approach. *See* REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSION A (incorporated by reference at 50 IAC 2.3-1-2). The value established by use of the Guidelines, while presumed to be accurate, is merely a starting point. A taxpayer may offer evidence relevant to market value-in-use to rebut that presumption. Such evidence may include actual construction costs, sales information regarding the subject or comparable properties, appraisals, and any other information compiled in accordance with generally accepted appraisal principles. MANUAL at 5.
- b) The Petitioner's case is reminiscent of how property was assessed under Indiana's former system in that it focused on the valuation of particular components of the property (paving and land), but it completely failed to address what is now the fundamental question: What is the correct market value-in-use for the entire property? *See Westfield Golf Practice Center v. Washington Twp. Assessor*, 859 N.E.2d 396, 398-399 (Ind. Tax Ct. 2007); *Eckerling v. Wayne Twp. Assessor*, 841 N.E.2d 674, 677-678 (Ind. Tax Ct. 2006) (explaining that a taxpayer cannot rebut the presumption that his assessment is correct without presenting evidence of his property's market value-in-use). As noted above, there are many ways that a taxpayer can overcome the presumption that an existing assessment is correct and prove what the correct market value-in-use really should be. (The Tax Court has stated that an appraisal is often the best way to do so.) The Petitioner failed to demonstrate that its valuation evidence, which purports to prove actual cost, conforms to any generally accepted appraisal principles. The Petitioner's case contains absolutely nothing to prove what the market value-in-use of the entire property or either individual parcel might be. This reason alone precludes any assessment change, but the Petitioner's claim fails for additional reasons.

Paving

- c) The Petitioner attempted to prove the value of the paving based on cost information and based on comparable assessments. Both attempts failed.

- d) The Petitioner offered testimony that it added 1 to 1.5 inches of “topping” and “resurfaced” the parcels in 1998 and 1999 for a total cost of \$36,150. The Petitioner provided no documentation to support the cost or exactly what it included. Furthermore, the Petitioner did not give a cost value for the preexisting base. It simply determined the cost per parcel by dividing what was paid by six parcels and allowing the remainder for depreciation. According to the Petitioner, the paving cost per parcel was approximately \$6,000. The Respondent correctly argued that valuation based on actual costs must incorporate all direct and indirect costs for what is being valued. The cost method requires more detailed, specific proof than the vague approximations the Petitioner offered. The proposed value of \$6,000 for paving on each parcel is not supported by probative evidence of actual cost.
- e) The Petitioner submitted parcel record information and a spreadsheet including four purported comparable parcels to demonstrate that other asphalt paved properties got lower assessed values. *Pet’r Ex. 2*. According to the Petitioner, the paving on its property and the comparables is similar in size and condition, but the comparable paving is assessed for approximately \$6,000 per parcel and the Petitioner’s is assessed for \$29,900 per parcel.
- f) The Respondent introduced evidence that the purportedly comparable paving is much older than the paving of the subject property. The Petitioner did not dispute that fact in any significant way. The Respondent also introduced evidence that paving depreciates very quickly. Therefore, according to the Respondent, the relative values of paving that is approximately the same size may be very different because of differing ages.
- g) As a starting point for assessment, new paving gets no depreciation, but ten year old paving gets 80 percent depreciation. GUIDELINES, App. F at 29 – 31. The Respondent’s position that the Petitioner’s comparables do not prove what the assessed value of the Petitioner’s paving should be is well taken. The Petitioner’s comparison of the assessed values of paving is conclusory and is not sufficient to establish the basis for any meaningful conclusion about relative values. *See Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 469-471 (Ind. Tax Ct. 2005) (stating that for a comparison a taxpayer must explain the characteristics of the subject property and how they compare to those of the purported comparables, as well as explain how any differences affect the relevant values). The Petitioner’s comparison failed to prove that the paving assessment should be changed.

Land

- h) The Petitioner argued the subject land assessments are excessive because these two lots on Western Avenue have limited exposure to street traffic and no frontage on the bypass. But there is no probative evidence indicating the negative

influence factor already allowed for the current assessment does not sufficiently recognize those limitations.²

- i) The Petitioner failed to provide probative evidence to support the contention that the assessment of the land was excessive. The Petitioner therefore failed to establish a prima facie case of error with regard to its contentions.
17. Where a taxpayer fails to provide probative evidence supporting its position that an assessment should be changed, the Respondent's duty to support the assessment with substantial evidence is not triggered. *Lacy Diversified Indus. v Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003); *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998).

Conclusion

18. The Board finds in favor of the Respondent regarding the current assessment for each parcel in the subject property. The Petitioner failed to make a case for any valuation change regarding paving or land.

Final Determination

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines that the assessment should not be changed.

ISSUED: _____

Commissioner, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

² In closing argument, the Petitioner's attorney stated that the assessment of the subject property should be lowered because the assessment for a similar, contiguous lot that the Petitioner owns on Western Avenue was lowered to a total of \$68,300—a value the Petitioner does not debate. While that property appears on the map (Pet'r Ex. 1), there was no documentation of that assessment change and there was no testimony about it. The facts and analysis in this record are not enough to draw any conclusion about what that purported change might demonstrate regarding the market value-in-use of the subject property.

- APPEAL RIGHTS -

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5, as amended effective July 1, 2007, by P.L. 219-2007, and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required within forty-five (45) days of the date of this notice. The Indiana Tax Court Rules are available on the Internet at <http://www.in.gov/judiciary/rules/tax/index.html>. The Indiana Code is available on the Internet at <http://www.in.gov/legislative/ic/code>. P.L. 219-2007 (SEA 287) is available on the Internet at <http://www.in.gov/legislative/bills/2007/SE/SE0287.1.html>